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**CIRCULAR TO LIFE INSURANCE COMPANIES
AND LIFE BROKERS**

CONSUMER ISSUES No G.II.1

**CODE OF PRACTICE
FOR
ADVISING, SELLING AND COMPLAINTS HANDLING IN THE
LIFE INSURANCE INDUSTRY**

AUGUST 1995

CODE OF PRACTICE FOR ADVISING, SELLING AND COMPLAINTS HANDLING IN THE LIFE INSURANCE INDUSTRY**1. Introduction**

On 1 July 1995 the *Life Insurance Act 1995* (the Act) came into effect establishing a new regime for the regulation of the life insurance industry. A stated object of the Act is:

‘to protect the interests of the owners and prospective owners of life insurance policies in a manner consistent with the continued development of a viable, competitive and innovative life insurance industry.’

Specific consumer protection measures have always been an intended component of the new regulatory regime. The Consumer Protection Provisions are expected to be passed as an amendment to the Act in the early part of 1996. These provisions will provide the statutory framework for development of legislative instruments (Commissioner’s rules) in respect of:

- requirements for product information disclosure (Disclosure rules)
- requirements for advising selling and complaints handling (Code of Practice)

In the interim, these initiatives will be implemented by way of Circular.

2. Background to the Development of the Code of Practice

It has long been a recognised concern of the government of the day that, in respect of the dealings between large corporations and individual consumers, there may not be equality of bargaining power. In respect of the life insurance industry in particular, this view was supported, and raised to the public agenda, by three major reports published during the period 1992 - 1993. These were:

- The Trade Practices Commission Report on “Life Insurance and Superannuation”, December 1992
- The Senate Select Committee on Superannuation Report No 6 “Super Fees, Charges and Commissions”, June 1993
- The Australian Law Reform Commission Report No 65 “Collective Investments, Other People's Money”, June 1993

These reports were consistent in their criticism of selling practices in the life insurance industry - highlighting as potential problem areas commission levels, pressure sales and low early termination values.

The Consumer Protection Provisions represent the Government's response to perceived, and evidenced, poor practice in the life insurance industry. These provisions, in concert with the other elements of the new regulatory regime, will facilitate a more equitable relationship between the life insurance company as provider and its customers.

The Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry (the Code of Practice) is a key element in achieving a better balance in the relationship between insurance providers and consumers, and an increased level of protection for policyowners.

The early development of the Code of Practice was driven by a Government Taskforce chaired by the Insurance and Superannuation Commission and including representatives from the Federal Bureau of Consumer Affairs and the Trade Practices Commission.

A draft Code of Practice was released for public comment in August 1994 and over 70 submissions were received. These submissions highlighted the diversity of opinion amongst the various stakeholders and interest groups affected by the proposals.

Accordingly, in the final stages of the development of the Code of Practice, a Working Group was established, chaired by LIFA, with a membership representative of the major stakeholder groups including government, consumer groups, product providers and intermediaries. The Working Group was instrumental in facilitating discussion and achieving a consensus position across the stakeholder groups on a number of the issues. The final version of the Code of Practice reflects those consensus positions, but required final decisions on some remaining contentious issues to be taken by the Government.

While the Code of Practice, as issued, is clearly aimed at improving selling practices and ensuring policyowner protection immediately, it is anticipated that many companies will impose higher standards and that, in time, the Code itself will reflect an overall lifting of minimum standards.

Proposed Registration Board

During the development of the Code of Practice the original intention to include basic competency requirements and recruitment standards for life insurance advisers was set aside, pending the development of an industry based Registration Scheme. Such a scheme was strongly advocated by the agents' association, supported by the insurance companies and accepted in concept by the Government. The development phase of the scheme is well advanced and is expected to be completed during 1996.

3. The Role of the ISC in Consumer Issues

The draft Consumer Protection Provisions under the Act require the establishment within each life company of a Compliance Committee. The principal purpose of this Committee being to assist in dealing with consumer-related issues that arise in the

course of the life company's operations, and to ensure that the life company at all times has a proper system of management controls that will enable it to comply with the Disclosure Rules and the Code of Practice.

The motivation for establishing the Compliance Committee was to reinforce with life companies the importance of the Consumer Protection Provisions and to ensure that directors recognised that the responsibility in respect of these matters was theirs.

In keeping with this motivation it must be stressed, at this early stage of implementation of the Code of Practice, that enforcement of these provisions of the Code of Practice is the responsibility of the life company or life broker as appropriate. Within the ambit of this responsibility it is the life company or life broker that must make the operational and commercial judgements necessary in determining acceptable standards of practice to achieve compliance with the Code of Practice.

The ISC accepts responsibility for, and intends to play an active role during, the introduction of the concepts and intentions underlying the Code of Practice. Further the ISC will be taking an active role in monitoring the industry and the procedures life companies and life brokers have in place to enforce the requirements of the Code of Practice. The ISC cannot, and will not, accept responsibility for the interpretation of the specific requirements which the Code of Practice imposes or the judgmental decisions on how they should be complied with.

The ISC will be seeking to establish a relationship with representative industry groups and facilitate a communication process that works largely through these industry channels. The ISC encourages individual life companies and life brokers to similarly establish networks within the industry for communication of, and discussion on, the operational aspects of the Code of Practice. The function of the Compliance Committee and/or the nomination of a compliance officer is seen as integral to the development of appropriate communication lines between the ISC and the individual life companies or life brokers.

4. Commencement Date of the Code of Practice

Individual parts of the Code of Practice will take effect on the following dates:

1 September 1995	Part I Part IV	Introduction Inquiries, Complaints and Disputes
1 January 1996	Part II Part III Part V	Advising and Selling Practices Training and Competency Monitoring and Reporting

While life companies and life brokers do not have to formally comply with Parts II, III and V until 1 January 1996 it is expected that they strive for full compliance as early as possible.

5. Implementation of the Code of Practice

The implementation phase for the Code of Practice is the period from launch of the Code of Practice (3 August 1995) to the date on which the full requirements of the Code of Practice have commenced (1 January 1996). During the implementation phase, the ISC will be acting to ensure that industry is responding to the requirements of the Code of Practice and that life companies and life brokers will be in a position to comply with the full requirements by 1 January 1996.

To assist the ISC in this process, life companies and life brokers are required to provide the following information:

(a) *Code of Practice implementation plan*

The implementation plan will assist the ISC in monitoring industry implementation of the Code of Practice.

Life companies and life brokers are required to complete the attached implementation plan (Attachment 2) and forward it to the ISC by 30 September 1995.

(b) *Pre-Code statistical survey*

The purpose of the statistical survey is to gather pre-code statistics on life company and life broker practices. This information will be used as benchmark data against which changes in practices and procedures can be measured.

Life companies and life brokers are required to complete the attached statistical survey (Attachment 3) and forward it to the ISC by 30 September 1995.

(c) *Interim compliance report*

The purpose of this report is to monitor life company and life broker progress in putting in place procedures and mechanisms in anticipation of the implementation of the Code of Practice. This report will target the matters set out in paragraph 41.

The ISC will distribute an interim compliance report in November 1995 for completion and return by December 1995.

6. Monitoring of the Enforcement of the Code of Practice

The ISC's role in monitoring the enforcement of the Code of Practice will commence, in respect of the particular requirements of the Code of Practice, on the respective dates of commencement of those requirements. In this capacity, the ISC will be acting to ensure that, on an ongoing basis, life companies and life brokers remain in a position to comply with the requirements of the Code of Practice (i.e. maintain and develop the systems and management controls in place to enable compliance).

This monitoring will be primarily achieved through:

- (i) statistical reports from life companies and life brokers; and

(ii) an audit program implemented by the ISC involving routine and special-site inspection of the companies and brokerages.

Statistical report

Life companies and life brokers will be required to report to the ISC by completing a regular statistical report (paragraph 45 of the Code of Practice). The Pre-Code Statistical Survey included in this package should not be taken as indicative of the type, or level of detail, of information which will be sought on a regular basis.

Development of the format and content of the statistical returns to be required of life companies and life brokers will be progressed over the next three to six months. The development will occur in close consultation with industry representative bodies, and as a part of the total review of the financial and statistical returns required under the Act. This will ensure consistency and avoid duplication of the information sought under the Code of Practice and provided through other statistical returns under the Act.

As an indication of the matters on which it is expected information will be requested, the following list highlights some of the areas identified to date. (This should not be taken as an exhaustive list).

- use of Fact Finders
- business written and terminated by reason of replacement business
- same day sales
- experience under the cooling off provisions
- discontinuances by duration in force

The ISC will publicly report the findings of its data-gathering. In addition a comprehensive report will be presented to Parliament by inclusion in the ISC Annual Report.

7. Administration of the Code of Practice

(a) Customer Advice Record

There is no requirement under the Code of Practice for the Customer Advice Record (CAR) to be signed by the customer (refer to paragraphs 18-26).

The Commissioner is of the view that industry best practice would require the signing of this record by the customer. Life companies and life brokers are encouraged to adopt industry best practice in respect of the CAR.

LIFA has undertaken to monitor this by way of periodic survey, the results of which will be made available to the ISC. Further the ISC, in its own monitoring program, will have regard to this issue.

(b) External Dispute Resolution Mechanisms

Under the Code of Practice paragraphs 37-39, the Commissioner has power to grant and revoke approval for external dispute resolution mechanisms.

At the time of releasing this Circular the Commissioner has granted approval to the following:

- Life Insurance Complaints Service Limited
- Superannuation Complaints Tribunal

8. Attachments

1. Code of Practice for Advising, Selling and Complaints Handling in the Life Insurance Industry
2. Implementation Plan
3. Pre-Code Statistical Survey

R G Glading
Deputy Commissioner
Life Insurance

3 August 1995

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PART I INTRODUCTION

OBJECTIVES

1. This Code is intended to:
 - (a) promote the provision of high quality advice in relation to life policies, so that where policies are issued they are appropriate to the needs of the persons to whom they are issued;
 - (b) ensure that life companies, life brokers and life insurance advisers maintain a minimum standard of service when dealing with customers in relation to life policies;
 - (c) ensure life companies and life brokers play an active role in overseeing the conduct and competence of their life insurance advisers;
 - (d) ensure that life insurance advisers are competent in arranging the issue of life policies;
 - (e) ensure that life companies and life brokers have adequate procedures for dealing with inquiries and complaints by owners and prospective owners of life policies and by any persons who have an interest in a life policy; and
 - (f) ensure that, in the case of disputes that are not able to be resolved under procedures referred to in paragraph (e), owners and prospective owners of life policies and any persons who have an interest in a life policy have access to an adequate external dispute resolution mechanism.

2. The function of this Code is to require:
 - (a) the observance of standards to ensure that customers are placed in a position to make an informed choice;
 - (b) the establishment of arrangements to ensure that life insurance advisers meet relevant competency standards and follow principles of fair dealing; and
 - (c) the establishment of inquiries and complaint-handling mechanisms which ensure that customers are provided with timely and acceptable standards of assistance.

3. Compliance with the requirements of this Code shall be assessed having regard to the principle of utmost good faith that applies to contracts of insurance, as set out in the *Insurance Contracts Act 1984*.

APPLICATION

4. This Code applies to:
 - (a) all life companies registered under the *Life Insurance Act 1995*; and
 - (b) all life brokers registered under the *Insurance (Agents and Brokers) Act 1984*;in respect of their conduct and the conduct of their life insurance advisers.
5. Parts I and IV of this Code commence with effect from 1 September 1995, with the remainder of the Code to commence with effect from 1 January 1996. The provisions of the Code apply in respect of conduct engaged in by life companies, life brokers and life insurance advisers, and policies issued, on or after the date of commencement of the relevant Part. Notwithstanding the above, the complaint-handling and dispute resolution arrangements referred to in Part IV of this Code apply to complaints in respect of events which occurred before the date of commencement of this Code.
6. Where a group life or group superannuation policy is effected and any individual whose life is insured under the scheme, while not the policy owner, is making the effective purchasing decision, all the provisions of the Code will apply as if that individual were the customer. In all other cases where a group life or group superannuation policy is effected, Part II of the Code will not apply.

INTERPRETATION

7. References to the singular include references to the plural and vice versa.
8. For the purposes of this Code:

"**advice**" means any recommendation, express or implied, made to a customer with respect to the purchase, variation or termination of a life policy, but does not include:

- (a) answers to routine administrative queries;
- (b) factual information about a particular life policy;
- (c) collection of premiums and issue of receipts without other contact;
- (d) placing promotional statements on display, or merely handing them out or posting them;
- (e) merely acting as a facilitator, such as arranging for medical examinations;
- (f) non-personalised advice which merely analyses and reports on life policies and does not involve any needs analysis of a particular customer; or
- (g) merely incidental advice.

"**agent**", in relation to a life company, means a person in relation to whom an agency agreement is in force with the life company.

"**association**" for the purposes of this Code has the same meaning as "association with" has in respect of life brokers under section 38 of the *Insurance (Agents and Brokers) Act*

1984, except that it also extends to all employers or contractors of life insurance advisers.

"**authorised product**" means a product which a life insurance adviser is authorised by a life company or life broker to give advice on.

"**Commissioner**" means the Insurance and Superannuation Commissioner.

"**complaint**" means an expression of dissatisfaction conveyed to a life company or life broker about a product, advice or service offered or provided coupled with a request to remedy it.

"**customer**" means a person who deals with a life insurance adviser for the purpose of either:

- (a) purchasing, varying or terminating a life policy; or
- (b) seeking advice regarding a life policy;

and includes a policyowner, a life insured, a prospective policyowner and a person with an interest, or a prospective interest, including under a superannuation policy.

"**dispute**" means an unresolved complaint.

"**life company**" means a company registered under the *Life Insurance Act 1995*.

"**life insurance adviser**" is a natural person who, for reward, provides advice in respect of, or arranges, life policies.

"**life broker**" means a person who is for the time being registered under Part III of the *Insurance (Agents and Brokers) Act 1984* in respect of life insurance business.

"**life policy**" for the purposes of this Code has the same meaning as in the *Life Insurance Act 1995*.

"**merely incidental advice**" is advice provided by a solicitor, accountant or other adviser in circumstances where that solicitor, accountant or adviser:

- (a) does not provide a discrete advisory service in respect of life policies;
- (b) does not receive a fee, commission or other benefit for providing such advice; and
- (c) attaches to their advice a written recommendation that the customer seeks the advice of a life insurance adviser.

"**multi-agent**" is an agent who is authorised to act as a life insurance adviser by more than one life company.

"**product**" means a particular kind of life policy.

"**risk policy**" means a policy which provides no surrender value and no benefit payable on a specified date or dates.

"**sale**" means a customer's request, expressed in writing, for the issue of a new life policy, or for the variation of an existing life policy where that variation results in increased expenditure by the customer.

"**sell**" means obtain a sale, and sold and selling have corresponding meanings.

"**superannuation policy**" for the purposes of this Code has the same meaning as in the *Life Insurance Act 1995*.

"**termination**" means the giving by a customer of an instruction to terminate a life policy.

"**unsolicited contact**" means contact between a life company, life broker or life insurance adviser and a customer made where there has been no previous contact between the parties, but excludes a meeting which has been initiated by the customer.

PART II ADVISING AND SELLING PRACTICES

This Part specifies standards of practice that life companies and life brokers are to observe and to require their life insurance advisers to observe.

EXEMPTIONS

9. The requirements of this Part do not apply to risk policies where the annual premium payment under such policies is less than \$500 in total per life insured.

DISCLOSURE OF CAPACITY

10. At the earliest reasonable opportunity during advising or selling, a life insurance adviser must provide written advice to a customer of:
 - (a) the name and address of the life insurance adviser;
 - (b) the means of remuneration of the life insurance adviser, who is responsible for the life insurance adviser's conduct and whether the life insurance adviser's primary duty is to the customer or the life company; and
 - (c) if the life insurance adviser is only authorised to sell or advise on a restricted range of products - a statement to that effect.

SAME-DAY SALES

11. A life insurance adviser must not sell a policy (other than a risk policy) to a customer where that life insurance adviser has already sold another policy (other than a risk policy) on the same site (eg. work place, flats) or to someone of the same community group (eg. sporting club, ethnic group), within the previous 24 hours. Such sales will be permitted where the sale does not result from an unsolicited contact. Where a sameday sale occurs, this must be clearly indicated on the application/proposal form.

FACT FIND AND NEEDS ANALYSIS

12. In all cases where advice is given by a life insurance adviser, he or she must:
 - (a) analyse the needs, circumstances and objectives of the customer to ensure that advice is given on a reasonable basis and is not inappropriate; and
 - (b) take reasonable steps to ensure that the customer can sufficiently comprehend the advice and the basis for the advice to place the customer in a position to make an informed choice.

13. Unless the customer chooses (in terms of paragraph 17 of this Code) not to provide information, a life insurance adviser must undertake a fact find, that is, he or she must obtain sufficient information from the customer, subject to paragraph 16 of this Code, to satisfy the requirements of paragraph 12. This information would generally include, where relevant:
- (a) the customer's financial and family circumstances;
 - (b) details of the customer's needs and objectives for income, capital growth, security, liquidity, and the time period the customer is planning for;
 - (c) individual investment preferences and aversion or tolerance to risk;
 - (d) the level and type of retirement benefit which the customer (and domestic partner) can currently expect to receive;
 - (e) other customer details such as employment security, age, partner's age, expected retirement age and partner's expected retirement age.

Where the customer has indicated prior to the fact find or in its early stages that his or her interest extends only to risk policies, the fact find may not need to proceed through (b) to (e) above.

14. The information obtained during a fact find must be recorded in writing, the resultant document being referred to in this Code as a Fact Finder. The Fact Finder must be signed by the life insurance adviser as a record for the purposes of paragraph 40.
15. In satisfying the requirement in paragraph 13, a life insurance adviser may utilise information previously collected from the customer, provided that the customer agrees that the information remains relevant and up to date.
16. Where the customer and the life insurance adviser agree that only certain types of products or identified objectives are to be considered, the life insurance adviser need only obtain, and the Fact Finder need only contain, information that is relevant to the types of products or objectives under consideration. A reference to this agreement must be included in the Customer Advice Record referred to in paragraph 18.

INCOMPLETE FACT FIND

17. Where the customer chooses not to provide all information requested by the life insurance adviser for an effective fact find, the customer must be advised of the implications of not allowing an effective fact find and needs analysis to be conducted. The Customer Advice Record (referred to in paragraph 18) must contain:
- (a) a specific warning that appropriate advice may not be able to be given without complete information; and
 - (b) a statement that, by not providing sufficient information, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs.

CUSTOMER ADVICE RECORD

18. The customer must be provided with a copy of a written Customer Advice Record containing the information prescribed in paragraphs 16, 17 and 19 to 25 of this Code, no later than at the commencement of the cooling-off period.

Requirements where advice is given

19. Where advice is given, the Customer Advice Record must contain an explanation of the life insurance adviser's status and obligations that includes:
- (a) the name and business address of the life insurance adviser;
 - (b) the types of products which the life insurance adviser is authorised to give advice on, arrange or sell and the authorising life company(ies) or life broker which he or she represents;
 - (c) a description of any association the employer or contractor of a life insurance adviser has with the life company(ies) whose product(s) is/are recommended; and
 - (d) the means of remuneration of the life insurance adviser, who is responsible for the life insurance adviser's conduct and whether the life insurance adviser's primary duty is to the customer or the life company(ies).
20. Where advice is given, the Customer Advice Record must also contain the basis for advice including:
- (a) a brief summary of the information and material on which the advice is based;
 - (b) the type(s) of product(s) that was/were identified as suitable and an explanation of why that/those type(s) of product(s) is/are likely to satisfy the customer's identified needs and objectives;
 - (c) the name(s) of the particular product(s) that is/are recommended;
 - (d) an explanation of the reasoning that led to the recommendation and how the particular product(s) is/are likely to satisfy the identified needs and objectives of the customer;
 - (e) a statement in the Customer Advice Record that a copy of the Fact Finder is available on request; and
 - (f) any additional information required by paragraphs 21, 22 and 24.
21. If advice is given that does not, either wholly or in part, address the customer's identified needs and objectives, this must be documented in the Customer Advice Record.

22. If the customer elects to purchase a life policy that differs from the life insurance adviser's recommendation, or elects only to receive advice about a more limited range of products than the life insurance adviser offers (other than in terms of paragraph 16), the Customer Advice Record must contain:
- (a) information about this election; and
 - (b) a statement that, by making this election, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives.

Requirements where advice is not given or fact find is not undertaken

23. Where no advice is given to the customer, or no fact find is undertaken, the customer must be advised of any implications, and the Customer Advice Record must contain:
- (a) a specific warning that a life policy sold without the completion of a fact find may not be appropriate to the customer's needs; and
 - (b) a statement that, by not receiving advice, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives.

Requirements where an existing life policy is replaced

24. Where termination of an existing life policy and sale of a new life policy is advised by a life insurance adviser, the advice must be appropriate and have a reasonable basis and all reasonably foreseeable and relevant consequences of the change must be listed in the Customer Advice Record, including:
- (a) termination charges for the existing life policy;
 - (b) entry/establishment charges for the proposed replacement life policy;
 - (c) any duplication of initial costs; and
 - (d) any loss of benefits, temporarily or otherwise, that may arise when replacing the existing life policy.

Upon request and with the consent of the policyowner, a life company must provide to the life insurance adviser the necessary information to enable compliance with subparagraphs (a) and (d) within 20 working days.

Completion and retention of the Customer Advice Record

25. The Customer Advice Record must begin with a clear boxed statement that this is an important document that the customer should read. It must also invite the customer to contact the life insurance adviser or life company or life broker if he/she disagrees with, or does not understand, the Customer Advice Record. The opening statement should also remind the customer of the 14 day cooling-off period.
26. The Customer Advice Record must be dated and signed by the life insurance adviser and forwarded to the life company(ies) of the recommended product(s), or the life broker.

The life company(ies)/life broker must retain the Customer Advice Record signed by the life insurance adviser. The Customer Advice Record must be made available by the life company or life broker to the Commissioner or the relevant external dispute resolution mechanism promptly following request.

APPLICATION FORMS

27. Life companies must ensure that their application/proposal forms make appropriate provision for a signed acknowledgement by the customer that either:
- (a) the customer provided information requested by the life insurance adviser to form the basis of a complete fact find and needs analysis, and elected to purchase the life policy(ies) recommended by the life insurance adviser; or
 - (b) the customer chose not to provide all information requested by the life insurance adviser, and understands that by not providing sufficient information, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs; or
 - (c) the customer elected to purchase a life policy that differs from the life insurance adviser's recommendation, or elected only to receive advice about a limited range of products, and understands that by making this election, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives; or
 - (d) the customer was not given any advice, or no fact find was undertaken, and the customer understands that by not receiving advice, the customer risks making a financial commitment to a life policy that may not be appropriate to his or her needs and objectives.

PART III TRAINING AND COMPETENCY

This part specifies requirements of life companies and life brokers regarding the training and competency of life insurance advisers.

BASIC COMPETENCIES

28. Prior to the commencement of life insurance adviser registration, a life company or life broker must ensure that a life insurance adviser authorised on its behalf has adequate knowledge to enable him or her to demonstrate the following competencies:
- (a) the requirements of this Code, including complaint handling mechanisms;
 - (b) how to conduct a fact find and needs analysis and complete a Customer Advice Record; and
 - (c) legal requirements under all relevant legislation, together with the requirements of Insurance and Superannuation Commission circulars.

The necessary basic competencies applicable from the commencement of life insurance adviser registration will be determined by the then established Registration Board.

PRODUCT-SPECIFIC COMPETENCIES

29. A life company or life broker must ensure that a life insurance adviser receives sufficient information and/or training to enable him or her to satisfy the following competencies for each specific company product that the life insurance adviser has been authorised to sell on its behalf:
- (a) an adequate knowledge of the relevant product, including (where the product is investment linked) knowledge of the risk and return profiles of relevant securities;
 - (b) the ability to clearly explain the product and product-related material;
 - (c) an adequate knowledge of any specific laws which affect the product; and
 - (d) an adequate knowledge of the life company's systems, forms and procedures for that product, including procedures in the case of a claim or termination.

Multi-Agents

30. Each life company must provide sufficient information and/or training to ensure that multi-agents are competent to sell those company-specific products which the multi-agent is authorised to sell.

CONTINUING EDUCATION REQUIREMENTS

31. A life company or life broker must ensure that its life insurance advisers receive adequate continuing education, to enable them to continue to meet competency requirements.

PART IV INQUIRIES, COMPLAINTS AND DISPUTES

All life companies and life brokers must handle inquiries in a timely manner, must have internal complaint-handling mechanisms which meet minimum standards and must ensure that complainants have access to effective and independent external and free dispute resolution mechanisms.

INTERNAL INQUIRY AND COMPLAINT ARRANGEMENTS

32. A Customer of a life company or life broker is entitled to a response to written requests for:
- (a) information about existing policies, including requests about the surrender value;
 - (b) variation of life policies; or
 - (c) termination of life policies;
- within 20 working days of receipt of the inquiry.
33. Where a life company or life broker is unable, on reasonable grounds, to respond to a customer's written inquiry or request within 20 working days the customer is entitled to be advised of that fact as soon as is practicable within 20 working days and to be given an indication of when a response will be made.
34. Each life company and life broker must establish an internal complaint-handling mechanism. The mechanism must:
- (a) be free of charge to the complainant;
 - (b) be open to all persons who have an interest in a life policy;
 - (c) be capable of addressing all possible complaints against the life company or life broker;
 - (d) have documented procedures including time lines for making a decision and informing the complainant of those procedures in relation to a complaint;
 - (e) have a complaint dealt with by an officer of the life company or life broker who has authority to resolve most complaints without further referrals within the life company or life broker;
 - (f) provide written advice to the complainant of a decision and, unless the decision has been resolved to the satisfaction of the complainant, of the reasons for the decision;
 - (g) record decisions, reasons for decisions and maintain appropriate statistics; and

- (h) provide information to the complainant at the outset on the availability of the external complaint-handling mechanism and have arrangements for referral of relevant complaints to an external mechanism if the complaint is not resolved internally. The complainant must be reminded in writing of the availability of the external complaint-handling mechanism in the event that the claim is rejected in whole or in part.
35. All complaints should be resolved by the internal complaint-handling mechanism within 45 days of lodgement. However, where there are special circumstances relating to the complaint such that it is not reasonable for it to have been resolved in that period, the life company or life broker must inform the complainant of the reasons for the delay and that the complainant may, if the complaint has not been resolved within 90 days of lodgement, then take it to the relevant external dispute resolution mechanism in terms of paragraph 37 of this Code.
36. If the internal complaint-handling mechanism has not resolved a specific complaint within 90 days, the life company or life broker must inform the complainant of the reasons for the further delay and that the complainant may take the complaint to the relevant external dispute resolution mechanism referred to in paragraph 37 of this Code.

EXTERNAL DISPUTE RESOLUTION MECHANISMS

37. Each life company and each life broker that offers insurance directly to the public must be party to an external dispute resolution mechanism which:
- a) has the unrevoked approval of the Commissioner;
 - b) does not consider a complaint or dispute unless it has first been lodged with the relevant life company or life broker and:
 - i) has been resolved by the life company or life broker, but not to the satisfaction of the complainant; or
 - ii) has not been resolved by the life company or life broker and 90 days have elapsed since lodgement with the life company or life broker;
 - c) provides annual reports to the Commissioner and the Minister for Consumer Affairs (the Commissioner may require a specific format and content for annual reports); and
 - d) reports any systemic, persistent or deliberate conduct (including that of life insurance advisers) that infringes the requirements of this Code to the Commissioner and to the relevant life company(ies) or life broker(s) as soon as they are identified.

38. Before granting an approval under paragraph 37, the Commissioner must be satisfied that the mechanism will:
- (a) operate free of charge to the complainant;
 - (b) cover a sufficiently broad range of complaints;
 - (c) be independent of the parties to the complaint;
 - (d) be overseen by a body which includes consumer representation (appointed or approved by the Minister for Consumer Affairs) and a delegate of the Commissioner;
 - (e) have procedures which accord with the principles of natural justice (including written reasons for decisions);
 - (f) make decisions by reference to what is fair in all the circumstances, observes applicable law, relevant judicial authority and this Code, and has regard to good life insurance practice;
 - (g) have appropriate published procedures, including suitable standards of timeliness;
 - (h) be effectively promoted;
 - (i) have adequate resources;
 - (j) obtain observance by life companies and life brokers of its decisions;
 - (k) have adequate remedies available to it;
 - (l) maintain and publish appropriate statistics on its operations; and
 - (m) provide to the Commissioner, and to relevant industry associations, details of the decisions made in respect of all complaints, or a representative selection of complaints, including the reasons for the decisions but excluding information that would identify any of the parties to the complaint.
39. The Commissioner may revoke an approval granted under paragraph 37 if he/she is satisfied that a dispute resolution mechanism does not meet the conditions referred to in paragraph 38.

PART V MONITORING AND REPORTING

40. Responsibility for compliance with this Code rests with individual life companies and life brokers. Each life company and life broker must have appropriate documented procedures in place to monitor the performance of its life insurance advisers in relation to all aspects of this Code.
41. The monitoring procedures required by paragraph 40 must achieve a standard acceptable to the Commissioner. Without limiting the matters that the Commissioner may consider in determining whether a life company or life broker meets the requirements of paragraph 40, the Commissioner must be satisfied that procedures are in place to:
 - (a) ensure that fact finds are undertaken in line with the requirements of this Code;
 - (b) monitor the appropriateness of advice provided by its life insurance advisers to customers;
 - (c) closely monitor complaints about the conduct of life insurance advisers;
 - (d) ensure that there are appropriate pre-recruitment screening procedures;
 - (e) verify that life insurance advisers are trained to the necessary level of competence; and
 - (f) ensure adequate documentation is maintained.
42. Each life company and life broker must maintain adequate records including:
 - (a) internal complaint-handling mechanism statistics;
 - (b) all conduct (including that of life insurance advisers) known to the life company or life broker that infringes this Code including a record of systemic or repetitive infringements;
 - (c) a record of remedial action and its effect; and
 - (d) a record detailing training of life insurance advisers.
43. All serious or persistent conduct infringing this Code must be referred to the life company's Compliance Committee (or to the Board of the life company), or to the Directors or Principals of the life broker, so that systemic problems or problems with particular life insurance advisers can be identified and rectified.
44. Where a life company or a life broker becomes aware of a material breach of this Code, it must check the appropriateness of the procedures applicable, and of relevant policies previously issued through that life insurance adviser during the three year period preceding the date on which it became aware of the breach (as noted in paragraph 5, this obligation only applies to policies issued on or after the date of commencement of the Code) and take remedial action where appropriate.
45. A life company or life broker must provide regular reports to the Commissioner on its compliance with this Code.